

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 15-0432
Prime Sponsor(s): Sen. Woods
 Rep. Priola

Date: February 2, 2015
Bill Status: Senate Business, Labor, and
 Technology
Fiscal Analyst: Alex Schatz (303-866-4375)

BILL TOPIC: REPEAL JOB PROTECTION CIVIL RIGHTS ENFORCEMENT ACT

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue	Minimal potential decrease. See State Revenue section.	
General Fund		
State Expenditures	(\$30,494)	(\$30,641)
General Fund	(\$25,875)	(\$25,875)
Cash Funds	Decrease. See State Expenditures section.	
Centrally Appropriated Costs**	(\$4,619)	(\$4,766)
FTE Position Change	(0.4 FTE)	(0.4 FTE)
TABOR Set Aside	Minimal potential decrease.	
Appropriation Required: Reduction - (\$25,875) - Department of Regulatory Agencies (FY 2015-16)		

* This summary shows changes from current law under the bill for each fiscal year. Parentheses indicate a decrease in funds.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

Summary of Legislation

This bill modifies provisions of Colorado statute related to legal recourse for employment discrimination. The bill also repeals a requirement that the Colorado Civil Rights Division (CCRD) form a volunteer working group of employer and employee representatives.

Recourse for employment discrimination. The bill reverses certain changes to state employment law enacted by House Bill 13-1136, which took effect January 1, 2015. Specifically, the bill repeals and reenacts provisions of state statute related to remedies for employment discrimination.

Under current law (HB 13-1136), any employee who proves to the CCRD or, as applicable, the State Personnel Board (personnel board) workplace discrimination on the basis of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry may seek equitable relief (e.g., reinstatement) or an award of back pay and prospective earnings. In cases of intentional discrimination, and subject to certain limits, HB 13-1136 permits an employee who has prevailed at the CCRD or personnel board to pursue compensatory and punitive damages in state court. The present bill eliminates the option to pursue damages in court and limits remedies awarded by the CCRD to certain equitable remedies, removing prospective earnings from CCRD remedies.

A conforming amendment repeals the authority for the Risk Management Fund in the Department of Personnel and Administration (DPA) to be used for payment of compensatory damages to state employees.

Volunteer working group. Under current law, the volunteer working group organized by CCRD in the Department of Regulatory Agencies (DORA) is to develop education and outreach resources for employers to prevent discriminatory employment practices. An education and outreach plan was to be produced in FY 2013-14, and the group was also to compile educational resources for dissemination on the CCRD website. The bill repeals all statutory requirements for the working group.

Background

Federal employment law. Federal law provides for compensatory and punitive damages when a business with at least 15 employees is found to have engaged in discriminatory conduct on the basis of age, race, sex, or certain other personal characteristics. As a result of the potential for substantial damage awards, many employees of both public and private organizations pursue employment discrimination claims under federal law. However, federal employment law does not cover employers with fewer than 15 employees or discrimination on the basis of sexual orientation.

House Bill 13-1136. In 2013, preexisting state employment law covered employers of all sizes, and prohibited employment discrimination on the basis of sexual orientation. By amending Colorado law to provide the same forms of relief available under federal law (e.g., compensatory and punitive damages), HB 13-1136 provided a means for employees of small organizations, as well as employees aggrieved on the basis of sexual orientation, to seek relief under state law.

Procedure for state employment discrimination claims. Under state law, a person who believes he or she has been subject to unlawful discrimination must exhaust administrative relief before filing with a court. To accomplish this, the person must file a claim with the CCRD or personnel board.

CCRD volunteer working group. The volunteer working group in CCRD was authorized to receive gifts, grants, and donations for its work. To date, no gifts, grants and donations have been received.

State Revenue

The bill reduces state General Fund revenue by a minimal amount. Under HB 13-1136, gifts, grants, and donations received by the CCRD to implement its volunteer working group were not specified for deposit in any cash fund. By repealing the CCRD's authority to receive gifts, grants, and donations, potential General Fund revenue is decreased in FY 2015-16 and future fiscal years.

TABOR Impact

This bill potentially decreases state revenue, which would decrease the amount required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

State Expenditures

State expenditures in the DORA are **reduced by \$30,494 and 0.4 FTE in FY 2015-16 and reduced by \$30,641 and 0.4 FTE in FY 2016-17**. The bill also reduces potential expenditures from the Risk Management Fund in DPA, and reduces workload by a minimal amount in the Judicial Department and the DPA. Reduced expenditures in the DORA are summarized in Table 1.

Table 1. Reduced Expenditures Under SB15-069		
Cost Components	FY 2015-16	FY 2016-17
Personal Services	(\$18,220)	(\$18,220)
FTE	(0.4)	(0.4)
Legal Services	(7,655)	(7,655)
Centrally Appropriated Costs*	(4,619)	(4,766)
TOTAL	(\$30,494)	(\$30,641)

* Centrally appropriated costs are not included in the bill's appropriation.

Assumptions. Implementation of the bill occurs on July 1, 2015.

Department of Regulatory Agencies. The workload of the CCRD will be reduced by the amount budgeted for new cases under HB 13-1136. On an annual basis, the bill eliminates approximately 24 cases investigated by the CCRD, mostly involving organizations with less than 15 employees and claims of discrimination on the basis of sexual orientation. This caseload, including associated personal services and operating costs, is included in current DORA budget assumptions for the CCRD. Overall, CCRD's expenditures will be reduced for 0.4 FTE in FY 2015-16 and future fiscal years, and by 81 hours of legal services (\$7,655 at the FY 2015-16 rate of \$94.51 per hour).

Judicial Department. The bill is expected to have a minimal effect on trial courts in the Judicial Department. The number of employment discrimination claims litigated in state courts will decrease under the bill, with greater limitations on remedies for aggrieved employees than under current law (HB 13-1136). The anticipated effect on state courts of new remedies under HB 13-1136 was a minimal workload increase starting on January 1, 2015. Few judicial resources will have been expended on HB 13-1136 if the present legislation is enacted, and the overall effect will be a minimal workload decrease in FY 2015-16 and future fiscal years, with no change in appropriations.

Department of Personnel and Administration. The bill reduces potential expenditures from the Risk Management Fund for compensatory damage awards to aggrieved state employees. Also, the workload of the personnel board in the DPA will decrease by a minimal number of prospective discrimination cases. State employees with an employment discrimination claim based on sexual orientation are unable to pursue this claim under federal law, and the lack of a state law monetary remedy under the bill deters some potential claims filed with the State Personnel Board. This reduction is minimal and does not require a change in appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under SB15-069*		
Cost Components	FY 2015-16	FY 2016-17
Employee Insurance (Health, Life, Dental, and Short-term Disability)	(\$3,207)	(\$3,207)
Supplemental Employee Retirement Payments	(1,412)	(1,559)
TOTAL	(\$4,619)	(\$4,766)

*More information is available at: <http://colorado.gov/fiscalnotes>

Local Government and School District Impact

Local governments and school districts are expected to defend employment practices in fewer cases of employment discrimination, reducing local expenditures on legal fees, settlements, and damage awards to aggrieved employees.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, and applies to employer-employee relationships on or after this effective date.

State Appropriations

The bill requires a negative appropriation, decreasing FY 2015-16 appropriations to the Department of Regulatory Agencies by \$25,875 and 0.4 FTE. Of this amount, a decreased appropriation of \$7,655 is reappropriated to the Department of Law.

State and Local Government Contacts

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| Regulatory Agencies | Judicial Department | Law |
| Personnel and Administration | Human Services | Local Affairs |
| Public Health and Environment | Public Safety | Natural Resources |
| Higher Education | Education | Counties |
| Corrections | Military Affairs | Municipalities |
| Special Districts | RTD | |